



STATE OF NEW YORK

**UNEMPLOYMENT INSURANCE APPEAL BOARD**

PO Box 15126

Albany NY 12212-5126

**DECISION OF THE BOARD**

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Mailed and Filed: APRIL 24, 2023

IN THE MATTER OF:

Appeal Board No. 627841

PRESENT: MICHAEL T. GREASON, MEMBER

In Appeal Board Nos. 627841, 627842 and 627843, the claimant appeals from the decisions of the Administrative Law Judge filed January 13, 2023, which sustained the initial determinations holding the claimant ineligible to receive benefits, effective April 27, 2020 through February 14, 2021, on the basis that the claimant was not totally unemployed and/or had earnings that exceeded the statutory limitation; charging the claimant with an overpayment of \$5,854.75 in benefits recoverable pursuant to Labor Law § 597 (4), Pandemic

Emergency Unemployment Compensation (PEUC) benefits of \$2,695.00 recoverable pursuant to Section 2107 (e)(2) of the Coronavirus Aid, Relief and Economic Security (CARES) Act of 2020, Federal Pandemic Unemployment Compensation (FPUC) benefits of \$7,500.00 recoverable pursuant to Section 2104 (f)(2) of the Coronavirus Aid, Relief and Economic Security (CARES) Act of 2020, and Lost Wages Assistance (LWA) benefits of \$1,500.00 recoverable pursuant to 44 CFR Sec. 206.120 (f)(5); and reducing the claimant's right to receive future benefits by 264 effective days and charging a civil penalty of \$2,407.46 on the basis that the claimant made willful misrepresentations to obtain benefits.

At the combined telephone conference hearings before the Administrative Law Judge, testimony was taken. There were appearances by the claimant and on behalf of the Commissioner of Labor.

Our review of the record reveals that the case should be remanded to hold a hearing. On appeal, the claimant contends that she did not appear at the adjourned hearing because she did not have a working phone number at the time of the hearing. The claimant states she now has a working phone number and has

provided this phone number to the Appeal Board. In the interest of justice, the Board has determined to provide the claimant another opportunity to appear and provide testimony and evidence. The claimant is directed to contact the Hearing Section to obtain the transcripts of the hearings held on December 5, 2022 and January 10, 2023 and copies of the exhibits 8 through 13. Prior to the remand hearing, the claimant is directed provide the Hearing Section with her bank statements, for the period from January 1, 2020 through February 28, 2021, for the bank account where the employer paid her by direct deposit. The claimant is on notice that the Judge may draw a negative inference if the claimant fails to produce these bank statements. At the remand hearing, the Commissioner of Labor shall be afforded an opportunity to cross-examine the claimant regarding her testimony from the December 5, 2022 hearing. The Commissioner of Labor is directed to produce Janna Gill to testify at the remand hearing. The claimant shall be afforded an opportunity to review and object to Exhibits 8 through 13 and to cross-examine Janna Gill regarding her testimony at the hearing held January 10, 2023. The Judge shall take such further testimony and evidence as may be necessary to complete the record.

Now, based on all of the foregoing, it is

ORDERED, that the decision of the Administrative Law Judge be, and the same hereby is, rescinded; and it is further

ORDERED, that the case shall be, and the same hereby is, remanded to the Hearing Section to hold a hearing on the issues of lack of total unemployment, recoverable overpayment of regular, FPUC, PEUC and LWA benefits, willful misrepresentation and civil monetary penalty, upon due notice to all parties and their representatives; and it is further

ORDERED, that the hearing shall be conducted so that there has been an opportunity for the above action to be taken, and, so that at the end of the hearing, all parties will have had a full and fair opportunity to be heard; and it is further

ORDERED, that an Administrative Law Judge shall render a new decision, on the issues of lack of total unemployment, recoverable overpayment of regular, FPUC, PEUC and LWA benefits, willful misrepresentation and civil monetary penalty, upon due notice to all parties and their representatives, which shall be based on the entire record in this case, including the testimony and other evidence from the original and the remand hearings, and which shall contain

appropriate findings of fact and conclusions of law.

MICHAEL T. GREASON, MEMBER